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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JOHN E. BARNHOUSE,

11 Plaintiff,

12 v.

13 HAROLD CLARKE, et al.,

Defendants.

No. C09-5527 RBL/KLS

ORDER GRANTING MOTION TO
SUBMIT MEDICAL RECORDS AND
DENYING FIFTH MOTION FOR THE
APPOINTMENT OF COUNSEL

14 Before the court are Plaintiff's motion to submit medical records (Dkt. 41) and fifth
15 motion for the appointment of counsel (Dkt. 42). Plaintiff's previous four motions for
16 appointment of counsel (dkts. 8, 10, 17, and 33) were denied. (Dkts. 21 and 39). In the court's
17 Order denying Plaintiff's fourth motion for counsel, the court noted that it has no evidence that
18 Plaintiff's claimed disabilities hinder his ability to adequately articulate his claims. Dkt. 39, p. 3.
19 It is assumed that the medical records attached to Plaintiff's affidavit in support of his motion to
20 submit medical records have been submitted so that the court may consider the medical records
21 in conjunction with Plaintiff's latest motion for counsel.
22

23 *DISCUSSION*

24 As Plaintiff is well aware, no constitutional right exists to appointed counsel in a § 1983
25 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v.*
26 *\$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("[a]ppointment of counsel

1 under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a
2 district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1)
3 (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled*
4 *on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether
5 exceptional circumstances exist, the court must evaluate both “the likelihood of success on the
6 merits [and] the ability of the petitioner to articulate his claims *pro se* in light of the complexity
7 of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)
8 (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that
9 show he has an insufficient grasp of his case or the legal issue involved and an inadequate ability
10 to articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
11 1101, 1103 (9th Cir. 2004).

13 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
14 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues
15 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further
16 facts during litigation. But, if all that was required to establish the complexity of the relevant
17 issues was a demonstration of the need for development of further facts, then practically all cases
18 would involve complex legal issues. *Id.*


20 In his latest motion, Plaintiff states that he should be appointed counsel because he is
21 unable to afford counsel, his imprisonment will greatly limit his ability to litigate, the issues are
22 complex, he has no legal training and limited library access. Dkt. 42. Plaintiff’s indigency,
23 inability to obtain counsel and lack of legal skills are not exceptional circumstances which
24 warrant the appointment of counsel.
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1 Plaintiff also states that because of a torn rotator cuff, he cannot write clearly, his sixth
2 grade education limits his ability to spell correctly, and he suffers from post traumatic stress
3 disorder due to repeated assaults by prison guards. Dkt. 41-1.

4 The medical records provided by Plaintiff consist of MRI reports and a post-op report
5 referring to medical care in 2006 and 2007. Dkt. 41-1. These records indicate that Mr.
6 Barnhouse underwent surgery in 2006 for fusion on his 5th vertebrae and that an MRI was
7 performed on Plaintiff's right shoulder in November 2007. The records do not, however,
8 indicate the present status of Plaintiff's medical condition nor do they indicate that he is unable
9 to prosecute this matter. Plaintiff has demonstrated an adequate ability to write and articulate
10 his claims *pro se*. Plaintiff has not demonstrated that the issues involved in this case are complex
11 or that he has had any difficulties in expressing them. Plaintiff has also not shown a likelihood
12 of success on the merits aside from his conclusory statements that his case has merit.
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14 Accordingly, Plaintiff's motion to submit medical records (Dkt. 41) is **GRANTED** and
15 his fifth motion to appoint counsel (Dkt. 42) is **DENIED**. The Clerk is directed to send copies of
16 this Order to Plaintiff.
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18 DATED this 8th day of March, 2010.
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22 Karen L. Strombom
23 United States Magistrate Judge
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